

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF THE CITY OF HENDERSON, NEVADA

These Comments are filed by the City of Henderson in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Henderson believes that local governments can issue appropriate local franchises for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, these comments are intended to inform the Commission about the facts of video franchising in our community.

In Henderson, a cable franchise is extended by a cable services agreement, which is executed by the City and the franchisee cable company. Henderson also has a cable ordinance, Chapter 4.26 of the Henderson Municipal Code, which operates in conjunction with this franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the cable ordinance. "Franchise", as the term is used in these comments, collectively refers to the cable services agreement and the cable ordinance.

Cable Franchising in Henderson

Henderson is Nevada's second largest city with a population of approximately 250,000. Our franchised cable provider is Cox Communications Las Vegas, Inc. Our current franchise began September 1998 and has an initial term of ten years, with

two five-year renewal terms. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. Consequently, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to Henderson in the amount of 5% of the cable operator's revenues. The revenues for franchise-fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act, and are also subject to certain programming-cost deductions allowed under Nevada law.

The terms of the franchise require that the cable operator to provide capacity for eleven total public, educational and governmental ("PEG") access channels on the cable system, including eight government-access channels (three analog and five digital), two educational channels, and one public/community access channel. While the cable operator is not required to financially support these PEG channels, the operator donates \$150,000 per year through a matching grant mechanism for support of educational access channels.

Our franchise requires the cable operator to maintain an Emergency Alert System ("EAS") consistent with FCC regulations, capable of remote activation by telephone. The EAS must allow a representative of Henderson to override the audio and to provide a video crawl on all channels of the cable system, without the assistance of the cable operator, for emergency broadcasts in the event of a civil emergency. These EAS requirements provide an important avenue of communication with our residents in the event of an emergency.

Specific customer service standards, based on FCC regulations, are also required by the franchise. These standards help ensure that the cable operator is maintaining consistent and measurable service metrics for the residents of Henderson. They include customer notification requirements, telephone and office hours of availability, service representative standards, complaint response procedures, installation and maintenance standards, billing requirements, and deposit, refund, and credit provisions, and are enforceable through the assessment of liquidated damages pursuant to the franchise.

Our present franchise, like the original franchise, contains reasonable build schedules (including schedules for upgrading the cable system) that the cable operator must meet to effectively serve our entire community. The cable operator is effectively required to provide service to all areas of our community based on line-extension policies (i.e., extending service to new subscribers located within 300 feet of the existing cable system, as long as there are at least 35 potential subscribers per mile for the requested extension).

In order to provide our residents with access to current technologies, our franchise provides for the following system capabilities: minimum bandwidth of 750 MHz, a fiber-optic wire trunk and distribution design (“fiber to the neighborhood”) with an average of 1,200 residences, businesses and other structures served by a single fiber node, and an activated two-way capability throughout the entire system. This system also permits the cable operator to offer cable modem service throughout Henderson.

The cable operator is required to maintain a \$200,000 general performance bond, and \$2,000,000 in general liability and motor vehicle insurance coverage, and workers’ compensation coverage in accordance with Nevada Revised Statutes.

The cable franchise grants the cable operator access to the public rights-of-way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider must obtain required permits from the appropriate municipal office before it may begin work in the public rights-of-way.

Under the franchise the operator has financial recordkeeping obligations, and the City has audit rights concerning the calculation (and recomputation, if appropriate) of franchise fees owed by the operator. The franchise also contains liquidated-damages provisions for violations of specific provisions, including the customer service standards specified therein.

The Franchising Process

The cable system serving Henderson also serves four adjoining communities, which worked together with Henderson in 1998 to simultaneously issue cable franchises for the cable operator. These communities are: Clark County, the City of Las Vegas, the City of North Las Vegas and Boulder City. The joint negotiating process allowed the provider to quickly obtain essentially uniform franchises in all five communities, so as to be able to serve a large region, while allowing each community to tailor its franchise to its unique needs in its specific jurisdictional area.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act, it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties, the provisions in the franchise agreement function as contractual obligations upon both parties.

As a part of negotiating a franchise with the City, the cable applicant must first file an application for an initial grant (or modification) of a cable franchise consistent with Henderson Municipal Code Chapter 4.26 and 47 U.S.C. Section 545. The applicant is afforded all due process and statutory rights under these regulations to protect the operator's interests. Publication of notice and a public hearing are required. The City cannot unreasonably deny a new cable franchise application, and it cannot deny renewal of an existing franchise except pursuant to the limited grounds set forth in U.S.C. Title 47.

In the event changes in law occur which materially affect the rights or responsibilities of either party, the franchise requires the parties to negotiate in good faith to amend the franchise to restore the original intent of both the City and the operator, and preserve the benefits bargained for by the parties.

Competitive Cable Systems

In 2002, Henderson granted a limited franchise to a cable provider to provide cable service to a relatively isolated master planned community located within its jurisdiction. Henderson has never denied or attempted to deny a cable franchise to competitive providers.

Conclusions

The local cable franchising process has functioned well for residents in the City of Henderson. As discussed above, we are experienced at working with the cable provider to see that the needs of the local community are met, and to ensure that the practical business needs of the cable provider are taken into account. Local cable franchising ensures that the local cable operator is allowed access to City rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced or negatively impacted, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in accordance with local codes and regulations.

Local franchises function as the critical mechanism by which local government is able to oversee the operations of cable service providers consistent with the public interest, and to ensure compliance with applicable laws. Local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

The City of Henderson therefore respectfully requests that the Commission not interfere with local government franchising authority, or otherwise disturb the operation of the local franchising process as set forth under Federal law, with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Henderson

By: Mark Backus, Esq.
Deputy City Attorney
240 Water Street
Henderson, Nevada 89015

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov